

This In Brief explores the drivers behind intellectual property policy in the Pacific Islands region through examining World Intellectual Property Day 2015 in Solomon Islands. It argues that this event, and the related official statements, illustrate the problematic way in which the plight of musicians and artists is used to further entrench Pacific Island countries into the global intellectual property regime (GIPR). Supporting artists and protecting cultural heritage are fundamentally important policy objectives, but it is important to consider whether such a regime will actually further these objectives, rather than just assuming it will. A detailed analysis of these issues is beyond this paper's scope (but see Forsyth and Farran 2015; Lipsett et al. 2014); the objective here is more modest — to raise three considerations to demonstrate the need to question the widely assumed link between integration into the GIPR and the benefit to artists, musicians and the protection of cultural heritage.

On 26 April 2015, Solomon Islands celebrated World Intellectual Property Day together with the local artist and music community. Speeches during the event repeatedly referenced promised benefits of intellectual property frameworks for artists and musicians, and the consequent need for Solomon Islands to strengthen its engagements with the international regime. Such promises included collection of royalties for artists through collecting societies, the protection of cultural values and heritage from external exploitation, and generally the message that 'Intellectual Property Rights will affect them in a lot of positive ways' (*Solomon Star* 27/4/2015:12). The celebrations led to the revival of the previously defunct Solomon Islands Music Federation on the basis that 'there are now better opportunities ahead, and of which the establishment of the Solomon Islands Intellectual Property System is one avenue towards this direction' (*The Island Sun* 11/6/2015). The Cultural Department announced the event would be held annually to 'celebrate the achievements of artists through intellectual property' (*Solomon Star* 27/4/2015:12). The linkage of support for the music industry to strengthened intellectual

property rights has also been a key feature of intellectual property policy in Vanuatu and Cook Islands over the past five years.

A number of intellectual property related commitments currently under consideration or in development by the Solomon Islands Government [were also announced at this event](#). These included Solomon Islands finalising its draft national intellectual property strategy, becoming a member of the World Intellectual Property Organisation, signing the Berne Convention (which establishes the international copyright system), finalising the draft Bill on the Protection of Traditional Knowledge and Cultural Expressions, and signing the Paris Convention (which establishes the international patent system). Although Solomon Islands is a member of the World Trade Organisation, which requires its members to be party to these agreements through the Agreement on Trade Related Aspects of Intellectual Property (TRIPS), it is also a least developed country. As such, it is entitled to an exemption from this requirement until 2021. This exemption was extended for the second time in 2013 [in recognition of the particular hardships that these GIPRs can have on developing countries](#).

There are three considerations that highlight the need to probe further into the assumed linkage between the GIPR and the interests of artists, musicians, and the protection of traditional knowledge that is commonly made in the region.

First, the GIPR tends to concentrate ownership of intangible assets within powerful interest groups. Although the trope of the struggling artist or genius scientist is often used to advocate for strengthened rights, in reality the main beneficiaries of strengthened rights are largely corporations. About one-third of all patents owned by organisations in both Australia and the US were owned by just 100 companies (Moir 2008). Statistics show a clustering of intellectual property ownership rights in certain countries. For example, in 2014, [75 per cent of patents held worldwide were held by just four countries](#): China, USA, Japan, and Korea. In [2002, it was estimated that over half \(53 per cent\) of the value of all royalty](#)

[and license fees paid worldwide were received in just one territory — the US](#). In terms of geographical indications of origin, under the Lisbon System, France has over 500 active registrations and Italy some 100; [the six African countries part of this system only have two registrations between them, despite having been members of the treaty since the 1970s](#). The international system is clearly geared towards benefiting well-resourced companies in technologically advanced countries.

Second, intellectual property regimes have a range of associated costs that may outweigh the benefits. These costs come in different forms, including the administrative costs of establishing and running intellectual property offices and paying for the right to use foreign intellectual property, including rights over medicines, educational resources, genetic materials, software, information and so forth. It is consideration of these types of costs that has led to the lobbying for the exemption from TRIPS compliance for least developed countries mentioned above. Even if a particular industry, such as the music industry, *would* benefit from strengthening one particular type of intellectual property right, such as copyright, this should not necessarily justify the strengthening or introduction of another type of intellectual property right, such as patent, as the reports mentioned above indicate is happening in Solomon Islands. The spillover effects of these new types of rights onto other industries and aspects of development must be taken into account.

In terms of whether joining the Berne Convention *will* assist local musicians, research conducted in Jamaica found that simply updating copyright legislation to comply with TRIPS was unlikely to maximise economic returns for musicians. Indeed, despite the large international consumption of Jamaican music, the research indicated 'a steady haemorrhage of royalty fees' from Jamaican collecting societies to their foreign counterparts (Taylor 2013:81).

Finally, although claims are regularly made that intellectual property laws are needed to protect cultural heritage or traditional knowledge, the current international regime actually facilitates the misappropriation of traditional knowledge. Despite over 14 years of negotiation at an international level,

there is no international treaty for the protection of traditional knowledge, or room for much optimism about one in the near future. Therefore, any legislation that Pacific island countries introduce will not be enforceable outside of national boundaries. Consequently, integration into the GIPR will not help to '[protect Solomon Islanders and their culture, traditional knowledge and practices from exploitation](#)' as anticipated. This is a common misconception across the Pacific with potentially worrying outcomes.

In conclusion, this In Brief aims to encourage more critical investigation about the real costs and benefits of further integration of Solomon Islands and other countries in the region into the international intellectual property regime. As a Master Carver from the Cook Islands recently observed, 'legislation is often like a gun you have to protect yourself, but then it either backfires on you or else when the time comes for it to fire it won't work'.<sup>1</sup>

### Author Notes

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### Endnote

1 Interview with Michael Tavioni, Master Carver, Cook Islands, 5/11/2014.

### References

- Forsyth, M. and S. Farran forthcoming 2015. Weaving Intellectual Property Policy in Small Island Developing States. Cambridge: Intersentia.
- The Island Sun* 11/6/2015. [Solomon Islands Music Federation Revives](#).
- Lipsett, L., M. Forsyth, S. Raihan and W. Morgan 2014. [Pacific Trade and Human Rights 2014](#). United Nations Development Program, the United Nations Office of the High Commission on Human Rights, and the World Health Organisation.
- Moir, H. 2008. Who Benefits? An Empirical Analysis of Australian and US Patent Ownership. Centre for the Governance of Knowledge and Development. *CGKD Working Paper*. Canberra: ANU.
- Solomon Star 27/4/2015. World Intellectual Property Day Celebrated.
- Taylor, S. 2013. Reggaenomics: The Relationship between Copyright Law and Development in Jamaica. PhD thesis, Victoria University of Wellington.

